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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,597	10/01/2003	Dominic F. DeLaquil	DELD101	8229
7590	03/03/2006		EXAMINER	
ROBERT L. SHAVER DYKAS, SHAVER & NIPPER, LLP P.O. BOX 877 BOISE, ID 83701-0877			SHAPIRO, JEFFERY A	
		ART UNIT	PAPER NUMBER	
			3653	

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/677,597	DELAQUIL, DOMINIC F.
	Examiner	Art Unit
	Jeffrey A. Shapiro	3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/8/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5, line 2 has the phrase “compliant with a chosen diet or nutrition plan includes choice of...” It is unclear what is meant by this phrase.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al (US 6,859,215 B1).

As described in Claims 1-14, Brown discloses a menu (62, 64, 66, 68, 72, 74, 76, 82, 94 or 98) which have indicators for indicating adherence to various diets (such as Kosher, Vegan Heart Healthy or Organic. See figures 4, 5 and 6a-c, which allows a customer to choose ingredients to be compliant with a particular diet plan, for a

restaurant kitchen to prepare. See also figure 2, elements 36, 46 and 49 and col. 5, lines 3-40. Further regarding Claim 14, note col. 5, lines 48-67 and col. 6, lines 1-10 that describes listing diets on separate menus with compliance to a particular diet, with various items distinguished from others. For example, in col. 5, lines 65-67, items that do not satisfy the criteria of a particular diet or preference are “graphically distinguished.”

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Tsai et al (US 6,016,741).

With regards to Claim 17, Brown discloses the menu generating system described above. Brown further discloses a menu system that incorporates customer preferences with regards to food preparation techniques. See col. 6, lines 38-42.

Regarding Claim 15, Brown does not expressly disclose, but Tsai discloses an electric grill, also known under the trademark “the George Foreman Grill”, for preparing meats/fish such that fats naturally drain away from said meat/fish. See Abstract of Tsai.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have used Tsai’s electric grill having grease drain-off capability in a kitchen that services customers using Brown’s menu system.

The suggestion/motivation would have been to provide an option for making meats more "heart healthy" by draining away excess fats. See again, Tsai's abstract and Brown's figure 4, noting the column "heart smart" in row (62).

Regarding Claim 16, it would have been obvious to one of ordinary skill to have trained restaurant staff in the use of the menu system and the various diet plans and preferences that are available. The suggestion/motivation would have been to better enable customers to work with the menu and to choose food items that better fit their nutritional goals.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ragsdale-Elliot et al '835 is cited as another example of a menu system.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

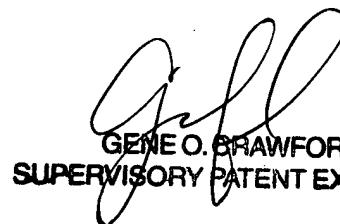
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571)272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Shapiro
Examiner
Art Unit 3653

February 21, 2006



GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER